

decisionmaker shall be forwarded by the decisionmaker to the Docket Section. If the circumstances in which a prohibited *ex parte* written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) *Prohibited oral ex parte communication.* (i) If a prohibited oral *ex parte* communication is made to a decisionmaker, he or she shall advise the person making the communication that the communication is prohibited and shall terminate the discussion.

(ii) In the event of a prohibited oral *ex parte* communication, the decisionmaker shall forward to the Docket Section a dated statement containing such of the following information as is known to him/her:

(A) The title and docket number of the proceeding;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties to the proceeding;

(C) The date and time of the communication, its duration, and the circumstances (telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed;

(E) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) All communications and statements forwarded to the Docket Section under this section shall be placed in the public file which shall be associated with, but not made a part of, the record of the proceedings to which the communication or statement pertains.

(4) *Service on parties.* The Administrator shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the Administrator that service of the communication or statement would be unduly burdensome, he or she may, in lieu of service, notify all parties in writing that the communication or statement has been made and filed and that it is available for inspection and copying.

(5) *Service on maker.* The Administrator shall forward to the person who made the prohibited *ex parte* communication a copy of each communication or statement filed under this section.

(f) *Effect of ex parte communications.* No prohibited *ex parte* communication shall be considered as part of the record for decision unless introduced into evidence by a party to the proceedings.

(g) *Sanctions.* A party or participant who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including, but not limited to, exclusion from the proceedings and adverse rulings on the issues which are the subject of the prohibited communication.

[45 FR 81578, Dec. 11, 1980, as amended at 53 FR 15784, May 3, 1988]

#### APPENDIX I TO PART 511—FINAL PREHEARING ORDER

##### Case Caption

##### Final Prehearing Order

A prehearing conference was held in this matter pursuant to Rule 21 of the Administration's Rules of Practice for Adjudicative Proceedings, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Counsel appeared as follows:

For the Administration staff:

For the Respondent(s):

Others:

#### 1. NATURE OF ACTION AND JURISDICTION.

This is an action for \_\_\_\_\_

and the jurisdiction of the Administration is involved under Section \_\_\_\_\_ of Title \_\_\_\_\_ U.S.C. The jurisdiction of the Administration is (not) disputed. The questions of jurisdiction was decided as follows:

#### 2. STIPULATIONS AND STATEMENTS.

The following stipulations and statements were submitted, attached to, and made a part of this order:

(a) A comprehensive written stipulation or statement of all uncontested facts;

(b) A concise summary of the ultimate facts as claimed by each party. (Complaint Counsel must set forth the claimed facts, specifically; for example, if violation is

claimed, Complaint Counsel must assert specifically the acts of violation complained of; each respondent must reply with equal clarity and detail.)

(c) Written stipulations or statements setting forth the qualifications of the expert witnesses to be called by each party;

(d) A written list or lists of the witnesses whom each party will call, a written list or lists of the additional witnesses whom each party *may* call, and a statement of the subject on which each witness will testify;

(e) An agreed statement of the contested issues of fact and of law, and/or separate statements by each party or any contested issues of fact and law not agreed to;

(f) A list of all depositions to be read into evidence and statements of any objections thereto;

(g) A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects that will be used in opening statements or closing arguments, but will not be offered in evidence. If any other such objects are to be used by any party, they will be submitted to opposing counsel at least three days prior to hearing. If there is then any objection to their use, the dispute will be submitted to the Presiding Officer at least one day prior to hearing;

(h) Written waivers of claims or defenses which have been abandoned by the parties.

The foregoing were modified at the pretrial conference as follows:

[To be completed at the conference itself. If none, recite "none"]

### 3. COMPLAINT COUNSEL'S EVIDENCE.

3.1 The following exhibits were offered by Complaint Counsel, received in evidence, and marked as follows:

[Identification number and brief description of each exhibit]

The authenticity of these exhibits has been stipulated.

3.2 The following exhibits were offered by the Complaint Counsel and marked for identification. There was reserved to the respondent(s) and party intervenors, if any, the right to object to their receipt in evidence on the grounds stated:

[Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality]

### 4. RESPONDENT'S EVIDENCE.

4.1 The following exhibits were offered by the respondent(s), received in evidence, and marked as herein indicated:

[Identification number and brief description of each exhibit]

The authenticity of these exhibits has been stipulated.

4.2 The following exhibits were offered by the respondent(s) and marked for identification. There was reserved to Complaint Counsel and party intervenors, if any, the right to object to their receipt in evidence on the grounds stated:

[Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality]

### 5. ADDITIONAL ACTIONS.

The following additional action was taken:

[Amendments to pleadings, agreements of the parties, disposition of motions, separation of issues of liability and remedy, etc., if necessary]

### 6. LIMITATIONS AND RESERVATIONS.

6.1 Each of the parties has the right to further supplement the list of witnesses not later than ten (10) days prior to trial by furnishing opposing counsel with the name and address of the witness and general subject matter of his or her testimony and filing a supplement to this pretrial order. Thereafter additional witnesses may be added only after application to the Presiding Officer, for good cause shown.

6.2 Rebuttal witnesses not listed in the exhibits to this order may be called only if the necessity of their testimony could not reasonably be foreseen ten (10) days prior to trial. If it appears to counsel at any time before trial that such rebuttal witnesses will be called, notice will immediately be given to opposing counsel and the Presiding Officer.

6.3 The probable length of hearing is \_\_\_\_\_ days. The hearings will be commenced on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M. at (location) \_\_\_\_\_.

6.4 Prehearing briefs will be filed not later than 5:00 p.m. on \_\_\_\_\_. (Insert date not later than ten (10) days prior to hearing.) All anticipated legal questions, including those relating to the admissibility of evidence, must be covered by prehearing briefs.

This prehearing order has been formulated after a conference at which counsel for the respective parties appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing. It will control the course of the hearing, and it may not be amended except by consent of the parties and the Presiding Officer, or by order of the Presiding Officer to prevent manifest injustice.

\_\_\_\_\_  
(Presiding Officer's Name)  
(Presiding Officer's Title)

## **Pt. 512**

APPROVED AS TO FORM AND SUBSTANCE

Date: \_\_\_\_\_.

Complaint Counsel.

Attorney for Respondent(s).

NOTE: Where intervenors appear pursuant to §511.17 the prehearing order may be suitably modified; the initial page may be modified to reflect the intervention.

## **PART 512—CONFIDENTIAL BUSINESS INFORMATION**

### **Subpart A—General Provisions**

Sec.

512.1 Purpose and scope.

512.2 Applicability.

512.3 Definitions.

### **Subpart B—Submission Requirements**

512.4 When requesting confidentiality, what should I submit?

512.5 How many copies should I submit?

512.6 How should I prepare documents when submitting a claim for confidentiality?

512.7 Where should I send the information for which I am requesting confidentiality?

512.8 What supporting information should I submit with my request?

### **Subpart C—Additional Requirements**

512.9 What are the requirements if the information comes from a third party?

512.10 Duty to amend.

512.11 What if I need an extension of time?

512.12 What if I am submitting multiple items of information?

512.13 What are the consequences for non-compliance with this part?

### **Subpart D—Agency Determination**

512.14 Who makes the confidentiality determination?

512.15 How will confidentiality determinations be made?

512.16 Class determinations.

512.17 How long should it take to determine whether information is entitled to confidential treatment?

512.18 How will I be notified of the confidentiality determination?

512.19 What can I do if I disagree with the determination?

## **49 CFR Ch. V (10–1–14 Edition)**

### **Subpart E—Agency Treatment of Information Claimed To Be Confidential**

512.20 How does the agency treat information submitted pursuant to this part before a confidentiality determination is made?

512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?

512.22 Under what circumstances may NHTSA modify a grant of confidentiality?

512.23 Under what circumstances may NHTSA publicly release confidential information?

APPENDIX A TO PART 512—CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

APPENDIX B TO PART 512—GENERAL CLASS DETERMINATIONS

APPENDIX C TO PART 512—EARLY WARNING REPORTING CLASS DETERMINATIONS

APPENDIX D TO PART 512—VEHICLE IDENTIFICATION NUMBER INFORMATION

APPENDIX E TO PART 512—CONSUMER ASSISTANCE TO RECYCLE AND SAVE (CARS) CLASS DETERMINATIONS

APPENDIX F TO PART 512—OMB CLEARANCE

AUTHORITY: 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166; 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

SOURCE: 68 FR 44228, July 28, 2003, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 512.1 Purpose and scope.**

The purpose of this part is to establish the procedures and standards by which NHTSA will consider claims that information submitted to the agency is entitled to confidential treatment under 5 U.S.C. 552(b), most often because it constitutes confidential business information as described in 5 U.S.C. 552(b)(4), and to address the treatment of information determined to be entitled to confidential treatment.

#### **§ 512.2 Applicability.**

(a) This part applies to all information submitted to NHTSA, except as provided in paragraph (b) of this section, for which a determination is sought that the material is entitled to confidential treatment under 5 U.S.C.